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| 09/826,789 | 04/05/2001 | Masanori Suzuki | 64753 CCD | 4081 |

7590 10/13/2005

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| EXAMINER |
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NOTE, JANIS L

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| ART UNIT | PAPER NUMBER |
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1756

DATE MAILED: 10/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/826,789

Applicant(s)

SUZUKI ET AL.

Examiner

Janis L. Dote

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-22, 30 and 32-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8, 21, 30 and 39 is/are allowed.
- 6) ☒ Claim(s) 1-6, 9-20, 22, 32-38 and 40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 April 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. This office action is responsive to the amendment filed on Aug. 1, 2005. Claims 1-6, 8-22, 30, and 32-40 are pending.

2. The "Amendment to the specification" section filed on Apr. 7, 2005, was held not to be in compliance with 37 C.F.R. 1.121 for the reasons discussed in the Notice of Non-compliant Amendment mailed on Jul. 13, 2005. Accordingly, the "Amendment to the specification" section filed on Apr. 7, 2005, has not been entered.

3. The objection to the specification, set forth in the office action mailed on Oct. 8, 2004, paragraph 5, has been withdrawn in response to the amended paragraphs at pages 18, 31, 36, 54-56, 62, 67, 79, and 70, of the specification, filed on Aug. 1, 2005.

4. The amendment filed on Sep. 26, 2003, is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

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The new paragraph at page 56, between lines 5 and 6, of the specification, filed on Sep. 26, 2003, states that "[a]ll values of saturation magnetization of toners set forth in the following Examples and Comparative examples were determined at a magnetic field strength of 10 kOe, and are, therefore values of saturation magnetization at a magnetic field of 10 kOe."

The disclosure in the new paragraph lacks antecedent basis in the originally filed specification. As noted by applicants in their response filed on Sep. 26, 2003, the paragraph bridging pages 12 and 13, the originally filed specification does not "expressly disclose" the magnetic field strength of 10 kOe. Furthermore, there is no objective evidence in the originally filed specification that there is any implicit disclosure of a magnetic field strength of 10 kOe.

Applicants are required to cancel the new matter in the reply to this Office Action.

Applicants' arguments filed on Apr. 7, 2005, have been fully considered but they are not persuasive.

Applicants assert the extrinsic evidence of the Rule 132 declaration, which was executed by Masanori Suzuki on Aug. 1, 2003, filed on Sep. 26, 2003, in combination with the second Rule 132 declaration, which was executed by Masanori Suzuki on Apr. 1, 2005, filed on Apr. 7, 2005, establishes that "the test

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for inherency properly here applicable is satisfied by the disclosure in the originally filed specification; hence the amendatory paragraph in question does not introduce new matter but merely sets forth expressly a physical property necessarily inherent in those toners as originally disclosed, 'a field of 10 KOe' being part of the definition of that property."

However, as discussed in the objection above and admitted by applicants, the originally filed specification does not report that the values of toner saturation magnetization in the examples and comparative examples of the specification were determined at a magnetic field of 10 kOe. A person having ordinary skill in the art, upon reviewing the disclosure in the originally filed specification, would have not have concluded with a reasonable degree of certainty that the saturation magnetization values reported for the toners exemplified in the examples and comparative examples were determined at a magnetic field of "10 kOe." As discussed in the above objection, there is no disclosure in the originally filed specification of a magnetic field of 10 kOe. The Rule 132 declarations are not part of the originally filed specification. The disclosure in an application must be complete when filed. Moreover, the Rule 132 declaration filed on Sep. 26, 2003, merely states that the values of the saturation magnetizations in the examples and

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comparative examples were determined in a magnetic field of 10 kOe. There is no objective or factual evidence showing that the saturation magnetization values reported in the examples and comparative examples can only be determined at a magnetic field of 10 kOe. Nor is there any factual or objective evidence in the present record showing that a magnetic field of 10 kOe is the standard field in the magnetic toner art to determine the saturation magnetization of toners. Furthermore, the declarant's statement in the Rule 132 declaration filed on Apr. 7, 2005, that "when the magnetic field is not less than 5 kOe, the saturation magnetization is almost the same for different values of magnetic field although the profile of the magnetization curve is different" is merely conclusory. There is no factual or objective evidence on the present record to support said statement. In fact, the declarant's previous statement in the Rule 132 declaration filed on Apr. 7, 2005, that the "saturation magnetization of a toner changes depending on the magnetic field at which the saturation magnetization is measured" contradicts declarant's latter statement that the "saturation magnetization is almost the same for different values of magnetic field" for magnetic fields not less than 5 Koe. Neither the declarant nor applicants have disavowed the

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declarant's statements in the Apr. 7, 2005, declaration.

Accordingly, the objection stands.

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1-6, 9, 20, and 38 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Instant claims 1, 20, and 38 and claims dependent thereon recite that the toner has a saturation magnetization of 10 emu/g to 25 emu/g at a magnetic field of 10 kOe.

The originally filed specification does not provide an adequate written description of the saturation magnetization recited in the instant claims. The originally filed

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specification at page 11, line 23, to page 12, line 1, and at page 17, lines 4-5, merely discloses that the toner has a saturation magnetization of 10 emu/g to 25 emu/g. As noted by applicants in their response filed on Sep. 26, 2003, the paragraph bridging pages 12 and 13, the originally filed specification does not "expressly disclose" the magnetic field strength of 10 kOe. Moreover, there is no disclosure in the originally filed specification that the saturation magnetization range of 10 emu/g to 25 emu/g is necessarily and inevitably determined at a magnetic field of 10 kOe as recited in the instant claims.

Applicants' arguments filed on Apr. 7, 2005, have been fully considered but they are not persuasive.

Applicants assert that adding the paragraph at page 56 of the specification, filed on Sep. 26, 2003, does not introduce new matter. Applicants assert that it "merely made explicit a necessarily inherent physical property (saturation magnetization at a magnetic field of 10 K0e) of the specific toners described in the Examples and Comparative Examples, and as such is now properly part of the written disclosure of the application."

However, as discussed in the rejection above, the originally filed specification merely discloses the range of 10 to 25 emu/g. There is no disclosure in the originally filed

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specification that would have led a person having ordinary skill in the art to conclude with a reasonable degree of certainty that the recited range of saturation magnetization of 10 to 25 emu/g in the instant claims was indeed determined at a magnetic field of 10 kOe. The Rule 132 declaration filed on Sep. 26, 2003, merely states that "all these values of the saturation magnetizations in the examples and Comparative examples . . . were determined in a magnetic field of 10 kOe." Unlike the facts in Kennecott Corp. v. Kyocera International Inc., there is no objective or factual evidence showing that the saturation magnetization values reported in the examples and comparative examples can only be determined at a magnetic field of 10 kOe. In Kennecott, micrographs of the product made and described in the parent application '954 were presented in the continuation-in-part '299 application. Nor is there any factual or objective evidence in the present record showing that a magnetic field of 10 kOe is the standard field in the magnetic toner art to determine the saturation magnetization of toners. The declarant's statement that "when the magnetic field is not less than 5 kOe, the saturation magnetization is almost the same for different values of magnetic field although the profile of the magnetization curve is different" is merely conclusory. There is no objective evidence on the present record to support

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that statement. Furthermore, that statement is contradicted by declarant's previous statement in the Rule 132 declaration filed on Apr. 7, 2005, that the "saturation magnetization of a toner changes depending on the magnetic field at which the saturation magnetization is measured." Moreover, as shown in European Patent 0936507 (EP'507), EP'507 discloses that magnetic toners comprising magnetic particles blackened by carbon black may have a saturation magnetization range of 7.5 to 65 emu/g, preferably 10 to 60 emu/g at a magnetic field strength of 1 kOe. Page 13, lines 8-11. The lower end of the EP'507 preferred range of 10 to 60 emu/g determined at magnetic field of 1 kOe overlaps the range of 10 to 25 emu/g recited in the instant claims.

Accordingly, applicants have not established that the saturation magnetization ranging from 10 to 25 emu/g at a magnetic field strength of 10 Koe is an inherent physical property of the toner recited in the instant claims. The rejection stands.

7. The recitation "toner contains carbon black on the inside thereof, the amount of said carbon black is in the range of 6 wt.% or less" in instant claims 5, 18, and 36 is interpreted to mean that the toner comprising the magnetic material surface-coated with a coloring agent further comprises carbon black in an amount of 6 wt% or less. This definition is consistent with

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the disclosure at page 26, lines 16-19, of the specification, which teaches that "[t]he best is that no carbon black is contained inside the toner from the viewpoint of the occurrence of the fogging of the background." Applicants have agreed to the examiner's definition. See the amendment filed on Nov. 12, 2002, page 9, lines 10-13. The following rejections have been made based on this definition.

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 32-34, 36, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,733,699 (Asanae'699) combined with European Patent 0936507 A2 (EP'507).

The claims are rejected for the reasons discussed in the office action mailed on Oct. 8, 2004, paragraph 10, which are incorporated herein by reference.

10. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Asanae'699 combined with EP'507, as applied to claim 32 above, further combined with additional teachings in Asanae'699 and EP'507.

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The claim is rejected for the reasons discussed in the office action mailed on Oct. 8, 2004, paragraph 11, which are incorporated herein by reference.

11. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Asanae'699 combined with EP'507, as applied to claim 32 above, further combined with US 5,866,289 (Asanae'289).

The claim is rejected for the reasons discussed in the office action mailed on Oct. 8, 2004, paragraph 12, which are incorporated herein by reference.

12. Claims 10-16, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Asanae'699 combined with EP'507 and US 5,771,426 (Oka).

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Asanae'699 combined with EP'507 and Oka.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Asanae'699 combined with EP'507, Asanae'289, and Oka.

The claims are rejected for the reasons discussed in the office action mailed on Oct. 8, 2004, paragraph 13, which are incorporated herein by reference.

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13. Claims 1-3, 5, 6, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Asanae'699 combined with EP'507, as applied to claims 32-34, 36, and 37 above, further combined with additional teachings in EP'507.

The claims are rejected for the reasons discussed in the office action mailed on Oct. 8, 2004, paragraph 14, which are incorporated herein by reference.

14. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Asanae'699 combined with EP'507, as applied to claim 1 above, further combined with additional teachings in EP'507.

The claim is rejected for the reasons discussed in the office action mailed on Oct. 8, 2004, paragraph 15, which are incorporated herein by reference.

15. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Asanae'699 combined with EP'507, as applied to claim 1 above, further combined with Asanae'289.

The claim is rejected for the reasons discussed in the office action mailed on Oct. 8, 2004, paragraph 16, which are incorporated herein by reference.

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16. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Asanae'699 combined with EP'507 and Oka.

The claim is rejected for the reasons discussed in the office action mailed on Oct. 8, 2004, paragraph 17, which are incorporated herein by reference.

17. Applicants' arguments filed on Apr. 7, 2005, with respect to the rejections set forth in paragraphs 9-16 above have been fully considered but they are not persuasive.

Applicants assert that it would not have been obvious to a person having ordinary skill in art to use the magnetic toner of EP'507 in the two-component developer of Asanae'699. In the Rule 132 declaration filed on Apr. 7, 2005, the declarant states that if the magnetic toner of a one-component developer, which has a high saturation magnetization, is used as the magnetic toner in a two-component developer comprising a magnetic carrier, the magnetic toner of the one-component developer "receives a strong attraction force from a magnet contained in the developing sleeve as well as the electrostatic force formed between a carrier and the developer, and thereby the one-component developer has poor developing ability, resulting in serious decrease of image density."

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Applicants' arguments are not persuasive. The declarant's statement in the declaration is merely conclusory. There is no factual or objective evidence in the present record to support that statement. Two-component developers comprising a magnetic carrier and a magnetic toner are well known in the art. See, for example, Asanae'699, col. 1, lines 44-47; and Oka, col. 8, lines 39-40. In fact, applicants later state that Asanae'669 uses a one-component magnetic toner as the toner in its two-component developer. See the response filed on Apr. 7, 2005, the paragraph bridging pages 16 and 17. Furthermore, US 4,699,865 (Mitsubishi) teaches that a magnetic toner used in a two-component developer comprising a magnetic carrier "may be the same or different from aforesaid magnetic toner used as the one-component developer." Col. 6, lines 5-8. US 5,532,095 (Asanae'095) also discloses that a magnetic toner can be used in a one-component system or in a two-component developer comprising a carrier. Col. 1, lines 30-35. Asanae'095 further discloses that "[a]s magnetization characteristics, the magnetic toner must have a large saturation magnetization, particularly, when it is used in the one-component developing system, because magnetic brush filaments must be high." Col. 1, lines 36-40. Asanae'095 teaches magnetic toner having a saturation magnetization of at least 50 emu/g at a magnetic field strength

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of 10 KOe that can be used as a one-component developer or as the magnetic toner in a two-component developer comprising a magnetic carrier. Col. 5, lines 26-30. Asanae'095 exemplifies two-component developers comprising magnetic carriers and said magnetic toners having saturation magnetizations of at least 50 emu/g at a magnetic field strength of 10 KOe. See col. 3, lines 49-54; col. 4, lines 23-26; and, Table 1 at col. 5, embodiments 1 and 2. According to Asanae'095, the two-component developers in embodiments 1 and 2 provide toner images with sufficient image density and resolution. Thus, Asanae'095 appears to contradict the declarant's statement that when a magnetic toner of a one-component developer is used as the magnetic toner in a two-component developer, that magnetic toner would have poor developing ability. The teachings in the prior art appear to show that it is well known in the art that magnetic toners that are used as one-component developers can also be used as the magnetic toner in two-component developers comprising a magnetic carrier. As discussed in the rejection in paragraph 9 above, the EP'507 black magnetic toner meets the magnetic toner requirements and preferred requirements disclosed by Asanae'699. EP'507 also teaches the advantages of using its black magnetic toners. In particular, the EP'507 black magnetic toner has excellent fluidity, blackness, and dispersibility in a

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binder resin. The toners provide high quality images and can be used in high speed copiers. As discussed in paragraph 9, Asanae'699 is also interested in providing high quality images. Thus, for the reasons discussed in the rejection in paragraph 9 above, it would have been obvious for a person having ordinary skill art to use the EP'507 black magnetic toner as the magnetic toner in the Asanae'699 two-component developer. Accordingly, for the reasons discussed in paragraphs 9-16, the two component developer recited in instant claims is prima facie obvious over the combined teachings of the cited prior art.

Applicants further assert that the toner concentration in the claims of Asanae'699 is from 10 to 90% by weight, which is much higher than normal toner concentrations. Applicants assert that Asanae'699 uses such a high toner concentration to overcome the problem of decreased image density because Asanae'699 uses a one component magnetic toner that comprises a high concentration of magnetic material and therefore high saturation magnetization. Applicants assert that in the instant application, saturation magnetization of the toner is controlled to avoid this problem.

However, applicants' assertion are mere attorney argument. There is no factual or objective evidence to support their assertions. Furthermore, the instant claims do not limit the

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amount of the toner in the two component developer recited in the instant claims. Moreover, instant claims 10-19, 22, 32-37, and 40 do not limit the saturation magnetization of the toner. Applicants cannot argue patentability based on limitations that are not present in the claims. The instant claims do not exclude the Asanae'699 toner concentration range.

With respect to claims 1-6, 9, 20, and 38, applicants further assert that it would not have been obvious from the disclosure in EP'507 and Asanae'699 to use a toner having a saturation magnetization as recited in those claims in combination with a magnetic carrier in a two component developer. Applicants assert that EP'507 does not teach that its toner can be used in a two-component developer, and that the single magnetic toner of EP'507 identified by the examiner as possessing the characteristics meeting the toner requirements of Asanae'699 has a saturation magnetization of 29.6 emu/g at a magnetic field of 10 KOe is well above the upper limit of applicants' claimed range.

Applicants' arguments are not persuasive. For the reasons discussed above, it is well known in the art to use a magnetic toner that is used as a one-component developer as the magnetic toner in a two-component developer comprising a magnetic carrier. As discussed in rejection of paragraph 13 above, which

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incorporates the discussions of EP'507 and Asanae'699 in paragraph 9 above, the EP'507 black magnetic toner in example 20 of EP'507 has a resistivity of $2.6 \times 10^{14} \Omega \cdot \text{cm}$ and comprises 40 wt% of its carbon black coated magnetic particles. The EP'507 toner's saturation magnetization of 29.6 emu/g is only 4.6 emu/g larger than the upper limit of the range recited in the instant claims. As discussed in paragraph 13 above, EP'507 teaches that its black magnetic toner may have a saturation magnetization preferably in the range 20 to 80 emu/g at a magnetic field of 10 kOe. The lower end of the preferred saturation magnetization range disclosed by EP'507 overlaps the range recited in the instant claims. Thus, EP'507 teaches black magnetic toners having the same saturation magnetization as the toners recited in the instant claims. This teaching in EP'507 controverts applicants' statement that the toner in its invention has a smaller saturation magnetization than the one-component developer. Accordingly, for the reasons discussed in the rejections in paragraphs 13-16, it would have been obvious for a person having ordinary skill in the art to adjust, through routine experimentation, the amount of the EP'507 carbon black coated magnetic particles in the black magnetic toner in example 20 of EP'507, such that the magnetic toner has a

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saturation magnetization as recited in instant claims 1-6, 9, 20, and 38.

Accordingly, the rejection of claims 1-6, 9-20, 22, 32-38, and 40 stand.

18. Claims 8, 21, 30, and 39 are allowable over the prior art of record.

The prior art of record does not teach or suggest a toner comprising a polyester binder resin and a magnetic material, as recited in the instant claims, and wherein said toner has a molecular weight distribution as recited in instant claims 8, 21, 30, and 39, and contains a THF-insoluble component in an amount of 2 to 40 wt% of said toner.

19. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janis L. Dote whose telephone number is (571) 272-1382. The examiner can normally be reached Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Mark Huff, can be reached on (571) 272-1385. The central fax phone number is (571) 273-8300.

Any inquiry of papers not received regarding this communication or earlier communications should be directed to Supervisory Application Examiner Ms. Claudia Sullivan, whose telephone number is (571) 272-1052.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JLD

Oct. 7, 2005

Janis L. Dote
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1700